

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: ABBOTT LABORATORIES,
et al., PRETERM INFANT
NUTRITION PRODUCTS LIABILITY
LITIGATION.

MDL No. 3026

Master Docket No. 22 C 71

Chicago, Illinois

May 19, 2022

10:00 a.m.

TRANSCRIPT OF PROCEEDINGS - Status
BEFORE THE HONORABLE CHIEF JUDGE REBECCA R. PALLMEYER

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1 (The following proceedings were had via
2 videoconference:)

3 THE COURT: First of all, I want to say good
4 morning and welcome to all of you in this initial status
5 conference with respect to the MDL that was assigned to me
6 recently.

7 I want to apologize profusely for making you stand
8 by for so long last Thursday when we had a technical glitch
9 here at the court. I take personal blame for it basically
10 because I have a hate-hate relationship with tech. Tech did
11 not cooperate as it should have.

12 Anyway, we are here this morning. What I would
13 like to do, recognizing that this is going to be a bit of a
14 challenge, is get your appearances.

15 I know my court reporter is on board. She has got
16 most of the information she needs, but we will need to get
17 your appearances. I'm not entirely clear on what the best
18 way to do that is because you won't know kind of when to drop
19 in.

20 So why don't I ask that -- we will begin with,
21 say -- to make things a little easier, we will begin with the
22 defendant's attorneys and then ask for attorneys who
23 represent plaintiffs to introduce themselves.

24 But first I am going to ask my courtroom deputy to
25 call the case so we have that part of the process underway.

1 THE CLERK: 22 CV 71, Hall versus Abbott
2 Laboratories for status.

3 THE COURT: Okay. Good morning.

4 So we are going to begin with appearances. Again,
5 if we can begin with attorneys -- why don't we say attorneys
6 for Abbott and then attorneys for Mead.

7 MS. PARKER: I'll jump in.

8 Good morning, your Honor.

9 This is Stephanie Parker, and I'm here for Abbott.
10 Meir Feder and Bridget O'Connor are also here with me for
11 Abbott.

12 Good morning, everyone.

13 MR. FEDER: Good morning, your Honor.

14 THE COURT: Good morning.

15 And do we have attorneys for Mead?

16 MS. CANNON: We do, your Honor. Good morning.

17 Rachel Cannon on behalf of Mead Johnson. And here
18 with me is Bill Andrichik and also Jamie Witte.

19 THE COURT: Okay. Good morning.

20 Now, unless some lawyer has a better idea about how
21 to do this, why don't we -- why don't we begin by asking
22 lawyers whose names begin with -- last names begin with A
23 through D to introduce themselves. And we will do that.
24 That might help a little bit.

25 MR. BECKER: Good morning, your Honor.

1 Tim Becker from Johnson Becker on behalf of
2 plaintiffs. With me are Stacy Hauer and Jacob Rusch.

3 THE COURT: Good morning.

4 MS. DEBROSSE ZIMMERMANN: Good morning, your Honor.

5 Diandra Debrosse Zimmermann -- I'll take the
6 "Debrosse" in my name -- with DiCello Levitt Gutzler on
7 behalf of the plaintiffs. Also on are my partners Mark
8 Abramowitz; Adam Levitt; Mark DiCello; Eli Hare is on from
9 our firm; and Grant Patterson, who is a 3L student trying to
10 learn the ropes.

11 Good morning, your Honor.

12 And good morning to everyone present.

13 THE COURT: Good morning.

14 Any other --

15 MS. AGRAIT: Good morning, your Honor.

16 THE COURT: -- lawyers A through D?

17 Go ahead.

18 MS. AGRAIT: Good morning, your Honor.

19 Miriam Agrait on behalf of the plaintiffs from
20 Rubenstein Law here on my own.

21 THE COURT: Okay. Good morning.

22 MS. DIXON: Good morning, your Honor.

23 Deborah Dixon also on behalf of the plaintiffs.

24 MR. BOWERSOX: Your Honor, Jeffrey Bowersox --
25 Portland, Oregon -- here on behalf of plaintiffs.

1 MS. DIAZ: Good morning, your Honor.

2 Yvette Diaz with Freese & Goss on behalf of
3 plaintiffs.

4 MR. CHILDERS: Good morning, your Honor.

5 Andrew Childers from Levin Papantonio Rafferty on
6 behalf of plaintiffs. With me is Sara Papantonio and Steve
7 Luongo also from Levin Papantonio Rafferty.

8 MR. SEGARS: Good morning, your Honor.

9 This is Tripp Segars from the Diaz Law Firm. I've
10 also got Joey Diaz, or Joe Diaz, in here with me as well.

11 THE COURT: Okay.

12 MR. CRUMP: Good morning, your Honor.

13 Ben Crump on behalf of the plaintiffs. I have with
14 me attorney Nabeha Shaer.

15 THE COURT: Okay. Good morning.

16 Anybody else whose last name begins with A through
17 D?

18 MR. BRUEHL: Good morning, your Honor.

19 Curtis Muskrat Bruehl with the Fulmer Sill law firm
20 on behalf of the plaintiffs.

21 THE COURT: Okay.

22 (Multiple speakers simultaneously.)

23 THE COURT: All right.

24 MR. DeGARIS: Annesley DeGaris, your Honor, on
25 behalf of the plaintiffs.

1 THE COURT REPORTER: Excuse me. There were
2 multiple speakers.

3 MR. DeGARIS: It's Annesley, your Honor. It's
4 probably my Southern drawl. It makes it hard to understand.
5 It's Annesley.

6 THE COURT: The best thing about the MDLs is we get
7 to see and hear lawyers from all over the nation. So that's
8 great.

9 MR. DeGARIS: I wish I could have subtitles with my
10 accent, but it doesn't work that way.

11 MR. BLANDIN: Your Honor, this is Stephan Blandin
12 with the final Chicago accent for the plaintiffs.

13 THE COURT: Why don't we then move on to, let's
14 say, E through K.

15 MS. KROEGER: Good morning, your Honor.

16 This is Leslie Kroeger from Cohen Milstein. With
17 me is my partner Carol Gilden.

18 MS. KAVENY: Good morning, your Honor.

19 Elizabeth Kaveny from Kaveny & Kroll in Chicago.

20 MR. KELLER: Good morning, your Honor.

21 This is Ashley Keller from Keller Postman on behalf
22 of certain removed plaintiffs. I'm with my colleagues
23 Benjamin Whiting and Amelia Frenkel.

24 MR. HART: Good morning, your Honor.

25 This is Steven Hart, Hart McLaughlin & Eldridge,

1 for the plaintiffs.

2 MR. GASTEL: Good morning, your Honor.

3 Ben Gastel from Branstetter Stranch & Jennings in
4 Nashville on behalf of certain removed plaintiffs.

5 MS. HYMAN: Good morning, your Honor.

6 Kelly Hyman from The Hyman Law Firm P.A. for the
7 plaintiff.

8 MS. KANE: Good morning, your Honor.

9 Julie Braman Kane from Miami, Florida, on behalf of
10 the plaintiffs.

11 THE COURT: Are we done with E through K?

12 Why don't we say L through P.

13 MR. LAURICELLA: Good morning, your Honor.

14 Noah Lauricella from GoldenbergLaw in Minneapolis
15 on behalf of the plaintiffs.

16 MS. PRESBY: Good morning, your Honor.

17 This is Ellen Presby from Ferrer Poirot Wansbrough
18 Feller & Daniel in Dallas, Texas, on behalf of the
19 plaintiffs.

20 MR. NACE: Good morning, your Honor.

21 Christopher Nace with Paulson & Nace in Washington,
22 D.C., on behalf of the plaintiffs.

23 MR. McLAUGHLIN: Good morning, your Honor.

24 Robert McLaughlin from Hart McLaughlin & Eldridge
25 on behalf of the plaintiffs.

1 MR. LEVIN: Good morning, your Honor.

2 Attorney Levin from Levin Rojas Camassar & Reck
3 based here in Connecticut. And several of my colleagues who
4 are appearing on the screen will introduce themselves
5 separately.

6 Nice to meet you all.

7 MR. MATTHEWS: Good morning, your Honor.

8 David Matthews of Matthews & Associates on behalf
9 of plaintiffs.

10 THE COURT: Okay. It sounds like we might be done
11 with that tranche.

12 How about attorneys whose last names start with Q
13 through V.

14 MR. SHKOLNIK: Hunter Shkolnik from Napoli
15 Shkolnik. My partner Shayna Sacks is on the line as well for
16 plaintiffs.

17 Good morning, your Honor.

18 THE COURT: Good morning

19 MR. ROMANUCCI: Good morning, your Honor.

20 Antonio Romanucci from Romanucci & Blandin here in
21 Chicago along with attorney David Neiman and also 3L student
22 Mr. Parker -- Parker Caramel.

23 MR. ROJAS: Good morning, your Honor.

24 José Rojas on behalf of the plaintiffs from the
25 firm of Levin Rojas Camassar & Reck. Steve Reck is also on

1 the line, and you have already heard an appearance from my
2 other partner Paul Levin.

3 MS. SLETVOLD: Good morning, your Honor.

4 Ashlie Case Sletvold from Peiffer Wolf in Cleveland
5 on behalf of the plaintiffs along with my colleague Jessica
6 Savoie.

7 MR. ROMANO: Good morning, your Honor.

8 John Romano on behalf of the plaintiffs.

9 MR. WATTS: Good morning, your Honor.

10 It's Mikal Watts from Watts Guerra on behalf of the
11 plaintiffs.

12 MS. SMITH: Mekele Smith of The Dugan Law Firm in
13 New Orleans on behalf of plaintiffs.

14 MR. RONCA: Your Honor, Jim Ronca from Anapol Weiss
15 in Philadelphia on behalf of plaintiffs.

16 MS. HIGGINS: Your Honor, Louise Higgins on behalf
17 of plaintiffs from New Orleans.

18 THE COURT: All right. Anybody W through Z?

19 MS. WATKINS: Diane Watkins from Wagstaff &
20 Cartmell on behalf of plaintiffs.

21 MS. SANTALUCIA: Your Honor, Julia SantaLucia from
22 Schlichter Bogard & Denton on behalf of plaintiff with my
23 colleague Kristine Kraft.

24 THE COURT: All right. Is there anybody who didn't
25 get a chance to introduce themselves earlier and would like

1 to do so now?

2 MS. LEVINE: Good morning, your Honor.

3 Marjorie Levine for plaintiffs from Romano Law
4 Group.

5 THE COURT: Marjorie what? I'm sorry.

6 MS. LEVINE: Levine.

7 THE COURT: All right.

8 MS. FERRER: Good morning, your Honor.

9 Yvette Ferrer with Ferrer Poirot Wansbrough for the
10 plaintiffs.

11 MR. BOWERSOX: Your Honor, you may have gotten my
12 name earlier. Jeffrey Bowersox from Portland.

13 I'm sorry. There was just a lot of people speaking
14 at the same time, and I'm not sure if I got my name before
15 the Court.

16 THE COURT: Okay. Great.

17 Well, let me begin by telling you that I am always
18 honored to be assigned to work on an MDL because it's my
19 experience that the lawyers -- (audio interference). I'm
20 expecting that that will be the case in this case as well.

21 We are getting some interference. If you wouldn't
22 mind muting yourselves when you are not speaking, that would
23 be great.

24 It's not my first MDL.

25 We have a number of things on the agenda for today,

1 some proposed by me and others proposed by the lawyers.

2 I know as well a significant and kind of threshold
3 issue is who is going to be handling the case on behalf of
4 plaintiffs either as liaison counsel and ultimately lead
5 counsel.

6 We are still getting some feedback -- I'm not sure
7 where that's coming from -- or some interference. I don't
8 think it's us, but who knows.

9 Anyway, if you can do your best to keep things
10 quiet on your end, that would be great.

11 I know that there are now some competing proposals
12 regarding plaintiffs' counsel -- at least two different
13 groups that have proposed appointment as plaintiffs' liaison
14 or lead counsel.

15 I wonder whether in the time since those motions
16 have been filed there has been any contact between those two
17 groups or any further effort to see if you can reach an
18 agreement?

19 MS. KAVENY: Your Honor, this is Elizabeth Kaveny.

20 I'm going to be speaking today in answer to some of
21 your questions to what we will refer to as Slate 1.

22 You are going to also be hearing from Tim Becker
23 from Johnson Becker in Minnesota; Andy Childers from Levin
24 Papantonio Rafferty in Florida and Georgia; Wendy Fleishman
25 from Lief Cabraser -- they have offices in California and

1 New York -- José Rojas in Connecticut; and last but not
2 least, Jim Ronca from Anapol Weiss in Pennsylvania.

3 We have had communications between our slate and
4 the slate which I believe has named itself RDC or RCD.

5 I'm going to turn it over to Andy Childers to
6 discuss what those conversations have been.

7 MR. ROMANUCCI: Your Honor, if I may? It's Antonio
8 Romanucci.

9 Before introducing who is going to be speaking on
10 behalf of the respective slates, I will be speaking on behalf
11 of our respective slate and also Diandra Debrosse Zimmermann,
12 who also goes by the beloved name of Fu, F-u. So if we hear
13 her referred to as Fu -- we only know her as that.

14 Mr. Crump also may be speaking. And, your Honor,
15 Mr. Crump right now is in a courtroom in Buffalo for some
16 issues that have happened in this country very recently. So
17 he may not be able to speak as much as he would have.

18 But for the DRC slate, as we have named ourselves,
19 you will hear mostly with respect to this issue, it will be
20 from Ms. Zimmermann, from Fu, and also myself.

21 And the answer to your question, your Honor, is,
22 since the two competing slates have offered their briefs,
23 there have been no other communications between us since one
24 week ago yesterday.

25 THE COURT: Got it. Okay.

1 Ms. Kaveny, I think you were holding forth on this.
2 No. You turned it over to Mr. Childers?

3 MS. KAVENY: Correct.

4 MR. CHILDERS: It's actually Childers, your Honor.

5 THE COURT: I'm sorry.

6 MR. CHILDERS: Mr. Ronca actually was going to
7 address this first. I'm sorry. We had a little confusion on
8 our end there.

9 I apologize, Beth.

10 THE COURT: Mr. Ronca, good morning.

11 MR. RONCA: Good morning, your Honor.

12 So I don't know if you want us to just launch into
13 argument or how you want to handle this proceeding. It's
14 difficult in the presence of the defendants, but I'm ready to
15 launch right in if you want.

16 THE COURT: It is complicated and difficult. I
17 think that there is -- although I realize it is a matter of
18 some debate, that defendants themselves may have some views
19 on the issue. Obviously we don't expect there to be any
20 collusion on the one hand. On the other hand, we think that
21 cooperation between competing counsel, not on issues but on
22 procedure, is always useful.

23 So why don't I let you hold forth briefly unless
24 it's your view that we should look at some of these other
25 issues first.

1 I'm afraid that some of the issues that I need to
2 discuss will turn on whether and who is going to be part of
3 the liaison team.

4 But one of the things we will need to know, as an
5 example of another issue, would be the number of cases that
6 are expected to be part of this MDL; what we should be doing,
7 for example, about remand motions that are filed in a number
8 of the cases already. I have looked at those briefs.

9 There are other issues, too, obviously. Some of
10 those, it seems to me, probably we would not want to address
11 until we have an idea who's going to be lead counsel, but
12 there may be other ways of approaching this.

13 Anyway, go ahead, Mr. Ronca.

14 MR. RONCA: Sure, your Honor.

15 Unfortunately for me, last week I had all day, but
16 today I have a deposition in a different MDL where I'm the
17 chief questioner, and it starts at noon. So I think I am
18 going to speak to the issue right now. The Court has the
19 papers, and you have reviewed those.

20 So I want to speak to the leadership slate that's
21 headed up by Wendy Fleishman, José Rojas, Andy Childers, Tim
22 Becker, and liaison counsel Beth Kaveny.

23 I think we can all agree that the lawyers on both
24 slates are confident and capable people. Both slates are
25 diverse.

1 Our proposed slate, for example, is inclusive. We
2 represent small and large firms from Connecticut to Florida,
3 Minnesota to Texas, Pennsylvania to San Francisco, and a
4 bunch of states in the middle. We have lawyers on long
5 experience and we have younger lawyers.

6 We tried to resolve the dispute with the other
7 slate by offering to merge leadership -- and I mean top
8 leadership -- but we could not get an agreement.

9 So naturally, it's going to come down to the Court
10 to choose or figure out a method to get us to a resolution of
11 this so we can go forward and litigate these cases on behalf
12 of the clients.

13 In putting together our slate, the leadership was
14 looking for lawyers who had clients, and they concentrated on
15 three things: Lawyers who had been litigating this case on
16 infant formula and NEC around the country for the last two
17 years and bring a wealth of knowledge from that litigation to
18 this litigation; secondly, to look for lawyers who have
19 unique specialties, for example, craft and emphasis on
20 science or on law and briefing; and, third, lawyers who we
21 know from long experience are hard workers. Let me briefly
22 expand on these in reverse order.

23 These MDL cases, as you know, involve a tremendous
24 amount of work. To effectively handle the case, the
25 plaintiffs' bench has to be deep.

1 I have experience and maybe the Court has witnessed
2 situations where you have a leadership committee and people
3 disappear and not for bad reasons. Other cases sometimes
4 take precedence.

5 And when people disappear, your bench gets thin,
6 and you can't get the work done. It happens too often. It
7 happened to us in the *Zimmer* case that you are especially
8 familiar with, and especially it could happen in this case
9 because we are proposing an accelerated schedule.

10 Our group has met with the other side and talked
11 about procedural issues. Our group has gotten together and,
12 for example, formed a committee to try to determine
13 bellwether cases on an early basis so we are not doing that
14 down the road, and we can launch into picking cases for trial
15 early.

16 When we picked this slate, we made sure each of the
17 proposed members had a track record of persistence and hard
18 work. The slate is large, but there is a lot of work to do.

19 For example, no matter how much IT leverage -- and
20 I heard you say that you hate the IT people or you have a
21 love-hate relationship.

22 In any event --

23 THE COURT: Not the people. It's just tech itself.

24 MR. RONCA: So no matter how much IT you leverage
25 in trying to go through hundreds of thousands, if not

1 millions, of pages of documents, you need human eyes, lawyer
2 eyes, on those documents before you can make determinations
3 about what they are going to use in deposition and for
4 *Daubert* hearings or for trial.

5 And if you had a million pages of documents -- and
6 recall that in *NexGen* it was 10 million. In *Zantac* it's
7 15 million. Okay.

8 If you had a million pages and you had 20 lawyers
9 working 50 hours a week, that's a month's work. If you had
10 10 million pages, that's ten months' work for 20 lawyers at
11 50 hours a week.

12 In *Zantac* there are 23 lawyers on the steering
13 committee, and we are too thin. We have lawyers doubling up
14 and tripling up time because we are too thin.

15 In *Zimmer* we had 16. And in the end, only a few
16 people did most of the work.

17 I will just use my own example. I was involved
18 mostly as first chair in 50 depositions in that litigation
19 because we weren't deep enough.

20 So the idea of appointing a small, tight committee
21 that supposedly is more efficient, that's a fool's errand
22 because the work will never get done. You need people to
23 contribute financially. You need people to contribute hours.
24 You need people to contribute expertise.

25 That leads me to the second point, which is, we

1 tried to assemble lawyers who had certain specialties to
2 cover all areas from IT, electronic discovery, science, law
3 and briefing, to trial lawyers.

4 I'm using myself as an example. I did not ask to
5 be on this committee. The lawyers who are the leadership
6 that I named earlier came to me and said, "We know you have
7 cases, and you have a particular expertise in the science
8 side of it, and we know that you work. Will you join us?"
9 That's the way we approached it.

10 This isn't the idea that we want to control this
11 litigation. What we want to do is get the work done that
12 needs to be done for our clients. And it's a tremendous
13 amount of work, and certain expertise is hard to find.
14 That's what our leadership looked for.

15 On the third point, I would like to pass the ball
16 to one of my colleagues, José Rojas, because Mr. Rojas has
17 been litigating these cases for a couple of years, and he can
18 explain what has gone on in these cases prior to today.

19 And, of course, if you have any questions, your
20 Honor, I am happy to answer them.

21 MR. ROJAS: Good morning, your Honor.

22 José Rojas. A pleasure.

23 I think I have been asked to say a few things about
24 the history of this litigation and how it is that we got
25 here. That history is actually a testament to the level of

1 hard work and cooperation that has already occurred in this
2 case.

3 My partner, Stephen Reck, actually met with the
4 very first mom at a McDonald's in New Haven back in 2017,
5 just to give some sense of how long this has been going on.

6 In 2019, we filed -- our law firm filed the first
7 case in Connecticut with Judge Underhill.

8 THE COURT: Right.

9 MR. ROJAS: And since that time, your Honor, we
10 have continued to file cases across the country.

11 But very early on, we really recognized that our
12 small firm from Connecticut would never be capable of
13 handling a case of this massive scale. So what we did is, we
14 engaged amazing lawyers, such as John Romano, who I see on
15 the screen here today; Beth Kaveny, who you have already
16 heard from; Deborah Dixon in California; Chris Mason,
17 Washington, D.C.

18 And with these lawyers, we started filing cases
19 across the country, and we began the process of litigating
20 them. We made pretty good progress, and it is that progress
21 that we made that I think ultimately led to the national
22 interest in this litigation.

23 We defeated -- again, with the help of many
24 lawyers, we defeated four motions to dismiss, three of them
25 in federal court, one of them with the help of Ben Gastel in

1 state court. Ben is also on the line here. He is primarily
2 involved in the state court litigation.

3 And with this team, we moved the litigation
4 forward. We were able to even serve comprehensive discovery.
5 We received some production from the defendants.

6 And through that time -- for at least 18 months,
7 your Honor, our group met regularly. We met once a month in
8 an effort to try to coordinate this litigation in an
9 effective fashion.

10 We held these monthly meetings over Zoom. During
11 these meetings there were experts, nationally renowned --
12 actually world renowned experts, who spoke at our meetings
13 about the dangers of infant formula and about this deadly
14 disease, necrotizing enterocolitis, and we had numerous
15 experts speak to us during that period.

16 As the cases evolved, we quickly realized we grew
17 to an inventory of about 1400 cases, your Honor. I think we
18 have the largest inventory of any of the lawyers involved in
19 the federal litigation anyway.

20 And we quickly realized we needed more help than
21 the great trial lawyers that were with us. So we engaged the
22 help of folks like Wendy Fleishman, Andy Childers, and Tim
23 Becker, who we knew were experienced MDL lawyers. And these
24 lawyers actually were the ones who steered this case toward
25 an MDL, toward consolidation. They have amazed me at their

1 knowledge of MDLs and how effectively and efficiently they
2 have been able to bring this case toward consolidation and
3 ultimately here before your Honor.

4 But they didn't stop there. They have actually
5 worked together with the defendants in this case to try to
6 get some proposed orders ready, to get discovery concepts
7 ready. We have even gone as far as discussing the selection
8 of bellwether trials and how that structure would be. There
9 have been multiple meetings with the defendants. It's been
10 an impressive statement to collaboration.

11 So, your Honor, the last thing I want to say -- and
12 I appreciate the time. I don't want to take too much of the
13 Court's time. But as we have worked through these cases hand
14 in hand with these moms, I have personally spoken to dozens
15 of mothers who have been affected by the tragedy of this
16 disease. Their babies have died. Their babies have
17 developed cerebral palsy, retinopathy of prematurity, Dravet
18 syndrome. These have been very difficult conversations.

19 The one thing that's emerged is the truism, which
20 is that this disease seems to disproportionately affect
21 persons of color. I have personally noticed that from our
22 own inventory. I have personally spoken to many, many
23 mothers in my native Spanish. It is unquestionable that
24 their interests need to be served.

25 What I'm certain of is that the slate that we are

1 proposing is a slate that will accomplish the goals -- the
2 most important goals, which is to effectively and efficiently
3 represent these clients. I'm very confident of that because
4 it's quite a team. I think it's the right size. I think the
5 best interest of these clients will be served.

6 Thank you, your Honor.

7 THE COURT: All right. Thank you.

8 I realize that the -- let me get it right -- DRC
9 group will want to be heard.

10 Mr. Romanucci, you wanted to make a further
11 comment; is that right?

12 MR. ROMANUCCI: Yes, your Honor. Thank you very
13 much.

14 Nice to meet everybody this morning. Pleasure to
15 be here.

16 So, your Honor, I want to give a little bit of a
17 macro overview of the DRC proposal, and then I want to hand
18 it over to Fu, as she will discuss some of the other minutia
19 that we have.

20 But, first of all, your Honor, you have to
21 understand that we really want to place an emphasis on the
22 size of our group, the diversity of our group, and the
23 experience of this group.

24 You are hearing two competing arguments regarding
25 the briefs that were filed about the size of the group. And

1 without referring to whether or not the size of our group is
2 foolish one way or another, I'm going to put that argument
3 aside because I do think that the size of our group is
4 absolutely the right size, and it is for a number of reasons.

5 First of all, when you look at who belongs to the
6 DRC group, we have a very strong local presence with regard
7 to DRC. Not only do we have Romanucci and Blandin, but we
8 have the DiCello Levitt firm, the Cohen Milstein firm, the
9 Hart McLaughlin firm. Those are -- the Power Rogers firm.
10 Those are all very strong local presences that have a very
11 diverse experience in these types of cases.

12 Not only are they very strong in MDL litigation
13 across the board, but they also have very strong backgrounds
14 in science and specifically medical malpractice.

15 So you have to look at not only -- not how many
16 firms there are but also how many attorneys are behind all
17 those firms. And when you look at the number of attorneys
18 behind those firms, I think that is compelling as to whether
19 or not the work gets done.

20 There is no question that I am beyond confident,
21 extremely confident that the work gets done here. And I can
22 tell you that from my own personal experience in a current
23 litigation that is also the local controversy. It's widely
24 known as the Sterigenics litigation. It is a toxic tort that
25 comes from Willowbrook, Illinois. It's a Cook-County-based

1 case. I am one of the three coleads. And there are well
2 over 800 plaintiffs in that case. We had to sift through, if
3 I'm not mistaken, somewhere around 3 to 400,000 documents
4 that equalled well over 5 million pages. Each one of those
5 pages had eyes on it.

6 We did actually employ a team of lawyers for six
7 weeks to go through most of the documents that were so old
8 that they were still in warehouse, 900 Bankers Boxes of
9 documents.

10 Our structure there is seven PEC firms. Besides
11 leadership, we have seven other PEC firms.

12 We have been able to get all of that work done,
13 multiple defendants, and the first three cases are going to
14 trial this year. And we have been able to do that in -- it
15 will be four years that the cases have been filed. We had to
16 go through the pandemic. We went through a remand -- I'm
17 sorry -- a removal and then a remand indeed. So we have
18 moved those cases beyond efficiently.

19 So when you look at the size of this group, it is
20 not to be criticized at all. If anything, it should be
21 complimented.

22 The other factor is this also, your Honor: We have
23 made great, great pains to ensure diversity here. You can
24 see that Mr. Crump and Ms. Zimmermann have been postured as
25 coleads here, and there is a reason for that. There have

1 been too many cookie-cutter type leaderships that we have
2 seen in this country that do not represent the demographics
3 of our country nor what the current bar representation is
4 nor, indeed with this particular case, the effect that the
5 NEC has on the minority communities. It is absolutely
6 necessary that there be a diverse leadership that includes
7 what I just mentioned with regard to the expertise and the
8 specific scientific background.

9 Even on this call, my partner, Stephan Blandin, he
10 is widely known and is one of the top medical malpractice
11 lawyers in the city. And that's what's important here. Not
12 only do we have the specific knowledge about the disease, but
13 we also have the experience.

14 Napoli Shkolnik, Watts Guerra, who better than law
15 firms that have led the opioid litigation and also wildfire
16 litigation.

17 So our breadth of knowledge here is extreme.

18 Hart McLaughlin & Eldridge, they are on the poultry
19 price-fixing case.

20 Our breadth is so wide and our bench is so deep
21 that the actual number of the firms involved is not a
22 consideration but really how many lawyers do we have that can
23 do the work to ensure the optimal outcome for these babies
24 that have been sickened by the milk-based formula -- by the
25 bovine-based formula that we are talking about here.

1 So when you look at -- again, just to recap before
2 I hand it over to Fu -- our strong local presence, our
3 terrific scientific background, our breadth of experience,
4 our knowledge, we are going to be able to move this
5 litigation as her Honor would like and that would be in an
6 efficient, optimal manner to ensure a great outcome for these
7 babies and the mothers that have been affected.

8 I will now turn it over to Ms. Diandra Zimmermann.

9 MS. ZIMMERMANN: Thank you, Tony.

10 Good morning again, your Honor.

11 And thank you for everyone's words this morning.

12 Let me first agree with Attorney Ronca. There are
13 extraordinary firms on both slates. I believe we are all
14 here for the right reason: to fight for the babies and
15 families who have been impacted in this litigation.

16 I think it might help to start with where we agree
17 and to recognize Mr. Rojas' work in this litigation.

18 We agree and we recognize, like Mr. Rojas does,
19 that it is women of color and babies of color who are
20 disproportionately impacted in this litigation. And for that
21 reason, we were very intentional in discussing collectively
22 the diversity of moving this litigation forward.

23 I think we all know this is a dialogue that has
24 been going on for quite some time about the lack of
25 representative attorneys in national litigation that impacts

1 the people on this soil, and those people include black and
2 brown and Asian people. So we are not shying away from that.
3 I think it's unfortunate, but I often have to say this, we
4 are also qualified.

5 So when we talk about moving through a litigation
6 and the hard work in the litigation, I do sit on the PEC for
7 the Paraquat litigation in addition to other litigations.
8 Mr. Crump has extensive experience in complex litigation.
9 And the experience of the firms involved in this litigation
10 cannot be understated. DiCello Levitt alone has been
11 involved in leadership in 40 MDLs. I assure your Honor that
12 what we do is work.

13 Also on the Zoom is my law partner Mark Abramowitz,
14 who -- I will say, like you, Judge, technology makes me want
15 to jump out a window, but Abe loves it, obsesses over it, and
16 has been key in developing a lot of our ESI protocol in the
17 Paraquat case.

18 And I think we have juggernauts in trial. Hunter
19 Shkolnik and his firm are on. Our firm actually has a jury
20 focus group, a trial entire practice with courtrooms in our
21 law firms.

22 So I cannot emphasize that we hold the expertise
23 amongst our firms.

24 As it relates to specific experience in this
25 litigation, let me speak directly to that issue.

1 Attorney Mikal Watts from Watts Guerra has been
2 involved in this litigation for an extended amount of time.
3 As we understand it, he is set for trial in the state court
4 litigation, we believe, in March of 2023.

5 To Mr. Rojas' point, which is a strong point, I
6 have personally spoken with our clients, as have many of our
7 colleagues on the phone. I have personally looked at the
8 science, as have my colleagues on this phone.

9 We have worked with experts. We have looked at the
10 science. We agree with our colleagues. When we fight for
11 people, we know there is a battle on our hands. We
12 understand the work that is involved in moving this process
13 forward.

14 We also recognize that part of this process in
15 seeking justice is working with other law firms. And I don't
16 think we are saying leadership means we speak to no one else
17 ever. Leadership means -- and I think what is contemplated
18 in the Manual For Complex Litigation is that a really tight
19 team is organized to address and shepherd the litigation for
20 efficiency and, for our purposes, to realize justice for our
21 clients.

22 So what we propose is a strong nine-firm team that
23 will work with the law firms on this Zoom; who will work with
24 the law firms who have cases; who will help create
25 committees; as we say in our paper, who will encourage law

1 students and young lawyers to become involved in a complex
2 process that impacts everyone on this soil, not the same
3 communities and some of the same lawyers.

4 So these are a lot of the things that we
5 contemplated as we decided to move forward.

6 Similarly, we have 2,000 clients. We will speak to
7 why we don't have 150 cases filed as of today. I think, for
8 us -- this is not a criticism of anyone else, but, for us,
9 diligence is our focus and making sure that we understand the
10 claims of each plaintiff as we file them, but we do
11 collectively represent approximately 2,000 plaintiffs.

12 I believe if Attorney Crump is available -- we do
13 apologize again, your Honor, he is in that proceeding -- I
14 think he may have some words. But I would ask that your
15 Honor just consider the consideration that our slate placed
16 into applying for leadership. We are prepared to work with
17 cocounsel. We are prepared to work with defense counsel to
18 facilitate an efficient movement of this litigation.

19 Thank you for your time, your Honor -- for
20 everyone's time.

21 Attorney Crump?

22 MR. CRUMP: Yes.

23 Judge, I apologize for not being able to be on the
24 Zoom as there are circumstances in America that require me
25 only to be able to talk to you by audio. I will be very

1 brief, as I find myself in Buffalo.

2 Issues of diversity and race in this country have
3 been far too long ignored. Certainly in our noble
4 profession, we oftentimes find that there are others who
5 always speak for those who are most affected by the
6 injustices.

7 We were very intentional, your Honor, with
8 presenting this motion for leadership for your consideration
9 because we believe that diversity should not be an
10 afterthought, but it should be a forethought.

11 We believe that there are talented lawyers of color
12 who have been denied over and over again positions of
13 leadership for every technical intellectual excuse you can
14 come up with in the book. Over and over again we say
15 throughout the history of mass torts, why aren't there any
16 black leadership? Why aren't there any Latin leadership? It
17 has been pretty nonexistent, so much in fact that articles
18 and treatises have been written about it. Federal judges
19 have belly ached about it and talked about it *ad nauseam*, but
20 yet nothing has happened to move this issue forward.

21 With this litigation, we are intentionally trying
22 to push the envelope to say that we believe those most
23 affected will be just as well served by having diversity in
24 leadership, and we believe they may even trust more coming
25 forward.

1 It is not lost on me, and I pray not others, that
2 many times minorities in America who are impacted the most do
3 not get involved in these mass torts, and we can only
4 speculate why. But some may believe that the people who lead
5 the efforts, they do not feel speak for them.

6 I respectfully ask for your consideration, and I
7 applaud all the lawyers on the call because I think everybody
8 is qualified. It's just so often minority lawyers have to
9 prove that we are qualified when others are just assumed.

10 THE COURT: Okay. There is no question that both
11 slates present qualified proposals here. I don't believe I
12 would make a mistake going in any direction.

13 I will tell you, I am going to issue something in
14 writing on this, but I don't want to keep my conclusions a
15 complete secret. I will tell you what I am inclined to do
16 without suggesting you can go to the bank on this.

17 I'm inclined to adopt Slate 1, but I would like to
18 add Ms. Zimmermann to it. Ms. Zimmermann's background shows
19 she has got significant experience in these cases. She is
20 geographically diverse. She brings diversity of gender as
21 well. And I think she could add to the team.

22 That said, I haven't made up my mind for sure. I
23 will issue something in writing on this.

24 What I would like to do now, if we can, recognizing
25 that we are in a position where it's not clear who's speaking

1 for whom, I would like to just get a sense about some of the
2 other issues on the agenda that we could discuss.

3 Number one, what is your expectation --
4 Ms. Zimmermann made a reference a moment ago to 2,000
5 potential plaintiffs. I know there are not that many cases
6 pending right now.

7 But maybe I can ask her to tell us, what would be
8 your best guess, Ms. Zimmermann, about how many cases are
9 going to wind up in this MDL?

10 MS. ZIMMERMANN: Well, I think, as I said, the DRC
11 group has 2,000. There will be thousands, potentially above
12 10,000. It's my educated guess at this time. And I think
13 more and more women will come forward.

14 THE COURT: Anybody from the other proposed slate
15 that has a response on that issue?

16 MR. BECKER: Your Honor, this is --

17 MS. KAVENY: I do, your Honor.

18 The Rojas firm has itself 1400 cases. If, in fact,
19 Ms. Zimmermann's colleagues have over 2,000, we would
20 estimate that it would be somewhere between 5 and 10,000
21 tagalong cases.

22 There are only 77 in suit right now, but that would
23 be our estimate as well, 5 to 10,000.

24 THE COURT: All right.

25 MR. BECKER: Your Honor --

1 THE COURT: Go ahead.

2 MR. BECKER: I'm sorry, Judge. Can I just comment
3 on that? It's Tim Becker.

4 Just for your background, we have internally
5 amongst ourselves in what we are coining the "first slate"
6 started to conduct an informal census.

7 Based on our review of that, it gets a little
8 complex because there is some double counting between the
9 Watts firm on the DRC group and on our group. But be that as
10 it may, our numbers are well in excess currently of 2000
11 cases.

12 So I think it's fair to say, whether the number is
13 5 or 10 or what have you, it's clear, based on our own
14 internal counting as well as what the DRC slate has, that
15 these cases will number in the several thousands, so north of
16 three. Whether we get to five or not is always an issue.

17 I think we are all mindful of the fact that case
18 counts can be a little bit deceiving in that retainer does
19 not equate to viable claims. So those numbers may fluctuate
20 a bit. But it's fair to say at this point they certainly
21 number in the several thousands.

22 THE COURT: Okay. That's helpful.

23 We here in chambers have begun the process of
24 creating a spreadsheet, but obviously that's going to be a
25 substantial chore. I will be relying on the lawyers to make

1 sure that we have a really accurate census because experience
2 teaches, when you are talking about thousands of cases, it's
3 very easy for one or more to slip off the radar screen, and
4 that's not fair because each of these individual plaintiffs
5 is entitled to his or her day in court.

6 Another question I had. I'm not sure who would
7 like to weigh in on this, but I would like to hear what would
8 be your proposals with respect to remand motions?

9 I know there are several cases in which there are
10 motions for remand. There are cases in which there's snap
11 removal arguments. There are also cases in which there are
12 nondiverse defendants that have been added and a challenge to
13 that on the part of defendants on the basis that the
14 litigation against the provider, for example, is a sham
15 addition.

16 What would be your sense of the numbers of remand
17 motions and whether those are going to be grouped or whether
18 they will be individually decided? What's your thought on
19 that?

20 MR. KELLER: Good morning, your Honor.

21 This is Ashley Keller from Keller Postman.

22 We have several of those motions to remand that we
23 recently filed. The defendants removed a bunch of cases in
24 Philadelphia. They have also removed cases in California
25 that haven't yet been transferred, but they potentially could

1 be. So this could be happening serially.

2 You won't be surprised to hear that, while we have
3 immense respect for your Honor and your courtroom, we think
4 our clients are entitled to be in state court. So what we
5 would ask for is whatever efficient process your Honor would
6 like to address these motions to remand expeditiously.

7 What we would like to avoid is a situation that
8 candidly has happened in some MDLs in the past where motions
9 to remand were put on ice for months or potentially even
10 years.

11 And as the Sixth Circuit recently pointed out in
12 its *mandamus* decision in the opioid MDL, that's just not
13 appropriate. Jurisdiction is a threshold issue that's
14 supposed to be addressed first. And in our federalist
15 system, particular plaintiffs can't be prejudiced in their
16 right to proceed in the forum that they are entitled to just
17 because it might be more expedient for other plaintiffs who
18 are properly in federal court.

19 So we would respectfully ask the motions to remand
20 be briefed on a schedule that is fast and that suits your
21 Honor from an efficiency perspective.

22 THE COURT: A couple of comments about that.

23 Number one, even apart from what the Sixth Circuit
24 has done, it's my strong belief that the MDL process is not
25 intended to deprive a litigant of a forum for which she is

1 otherwise entitled. The fact that there is an MDL pending
2 does not mean I will not grant a motion for remand if that's
3 the appropriate result in this case. That's not fair. It's
4 not the way -- that's not the purpose for the MDL process.

5 The purpose, as we all know, is to kind of
6 streamline particularly discovery, because when you have
7 dozens, hundreds, thousands of cases involving a particular,
8 in this case, product, we don't want to have to depose one
9 expert hundreds of times. We want that to be kind of a
10 streamlined process that makes sense. And to the extent that
11 we can do things that save individuals and the court system
12 effort, we want to do that. We don't want the MDL to become
13 a black hole where cases get filed and then parked for years
14 and nothing happens. That's not my goal at all.

15 What I will ask, then, that you do is -- and we can
16 do this -- perhaps a lawyer on each side can identify, so far
17 as we know right now, the cases that have motions for remand
18 pending -- I will look myself; I can find them myself, too,
19 but I don't want to lose track -- and perhaps what
20 overlapping issues there are. And I will set a relatively
21 rapid schedule to get those briefed, recognizing that it may
22 be that we are going to have additional such motions being
23 filed as time goes by with additional arguments that might be
24 made.

25 I have a question for Mr. Rojas, and that is, I

1 think you mentioned earlier that you met with a client back
2 in 2017.

3 Have there been any cases that have gone to verdict
4 in the state court or any federal court?

5 MR. ROJAS: No, your Honor, not to my knowledge.
6 Not -- there have been, obviously, NEC cases filed in other
7 contexts, mostly medical malpractice. But in the context of
8 a claim that the product is defective, I'm not aware of any
9 verdicts.

10 We had some trial dates before the MDL. The
11 *Sanchez* case was set for trial in the early part of next
12 year, but obviously that's been subsumed into here.

13 THE COURT: All right. And so far as you know, are
14 there any cases that -- any other cases set for trial where
15 it hasn't happened yet but will happen or expected to happen?

16 MR. ROJAS: Yes. In the state court litigation,
17 the *Simmons* case, I think, is first up out in Lake County.
18 That's probably the next trial as things currently stand.

19 THE COURT: Who represents the parties in that
20 case?

21 MR. ROJAS: So that is being handled by -- it is
22 one of our cases, but it's being handled by the Stranch firm.
23 Primarily Ben Gastel, who's on the line, has done amazing
24 things in that case.

25 MR. GASTEL: Good morning, your Honor.

1 This is Ben Gastel for the Simmons plaintiff.

2 And I also am counsel in the four Cook County cases
3 that have been snap removed and have fully briefed motions
4 to remand on the snap removal issue before your Honor that I
5 think you mentioned that you are aware of.

6 THE COURT: I am aware of those, yes.

7 Let me ask another question. Are you expecting --
8 anybody here expecting additional defendants besides Abbott
9 and Mead Johnson?

10 (No response.)

11 THE COURT: Are there additional defendants -- I'm
12 not talking about medical providers. I'm talking about
13 manufacturers or distributors.

14 Are there other players in that field that are
15 producing this formula?

16 MS. FLEISHMAN: Your Honor, Wendy Fleishman.

17 No, we do not expect any additional defendants in
18 that regard, none anticipated at this point based on the
19 investigation we have done to date.

20 THE COURT: All right.

21 Has there been any discussion or thought about
22 filing of a master complaint or a complaint with related fact
23 sheets?

24 Would such a proposal, in your view, be useful? To
25 my mind, it seems like it would be, but I want to hear from

1 the lawyers.

2 MS. PARKER: Your Honor, if I may jump in?

3 This is Stephanie Parker for Abbott.

4 Just a little bit of background before I answer
5 that particular question, if I may?

6 THE COURT: Sure.

7 MS. PARKER: We have been having actually a
8 significant number of, I think, very helpful discussions with
9 the plaintiffs' group. The discussions started even before
10 we knew you were going to actually be the MDL judge, when
11 everyone agreed that there should be an MDL.

12 We spent a lot of time on this issue about master
13 complaints and a number of other issues. And we hope that we
14 will be able to come to your Honor with an overall proposal
15 on how to select bellwethers, forms to be filled out,
16 discovery deadlines, all such as that, in short order -- I
17 would say definitely within two weeks, something like that.

18 But particularly with respect to the master
19 complaint, we believe we can reach agreement with the
20 plaintiffs' group on a profile form and medical record
21 authorizations that would be promptly completed by all of the
22 plaintiffs. And that will enable us to select the bellwether
23 cases -- both sides to select the bellwether cases, and then
24 a more extensive fact sheet to be completed by all the
25 plaintiffs designated as bellwethers. The plaintiffs will

1 speak up and agree with all of that, kind of where we are.

2 With respect to the master complaint question
3 itself, we do propose -- the defendants -- we do propose a
4 master complaint with accompanying -- what we are calling a
5 short form complaint. In that short form complaint
6 individual plaintiffs could identify any plaintiff-specific
7 allegations that they would like to raise.

8 And our view is -- the defendant's view is that
9 that master complaint would not be just purely
10 administrative. Instead that could be subject to affirmative
11 defenses and motions to dismiss so we can go ahead and start
12 moving forward on those legal issues as well.

13 MS. ZIMMERMANN: Your Honor, if I may?

14 THE COURT: Sure.

15 MS. ZIMMERMANN: The DRC slate through Tony and I
16 were involved in, I believe, the last of those conversations.
17 I know time is of the essence, but sometimes, as we say in
18 our office, you got to move slow to move fast.

19 So I think we had some additional concerns whether
20 it was about, you know, do we need a master complaint and
21 master answer? What is the timeline for the discovery plan?
22 What does it look like for bellwether selections? Or things
23 that, while I think it can feel great to say, "Your Honor, I
24 will get this to you in 10 days," it sometimes takes a little
25 more time to make the right decisions that we need to make on

1 behalf of our clients. And I say that especially in light of
2 the fact that some of the proposed dates and the movement of
3 the discussions were without the appointment of leadership.

4 So on behalf of DRC team, I wouldn't say let's wait
5 until June 15th, but I would say we probably need more than
6 two weeks to work through some of those issues, your Honor.

7 Thank you.

8 MR. BECKER: Judge, this is Tim Becker on behalf of
9 the, I guess, first slate.

10 Just to echo what Ms. Parker said, we have been in
11 negotiations with the defendants for quite some time
12 regarding most of the preliminary orders as well as the
13 preliminary procedures that you would anticipate similar to
14 what we did in the *Zimmer* litigation.

15 We had reached out to the DRC folks. They declined
16 to participate.

17 But be that as it may, where we are at this point,
18 irrespective of whether it's 7 days or 10 days or 50 days,
19 the Mead Johnson defendants are going to oppose a direct
20 filing order. They can talk about why they are going to do
21 that, but basically they are opposing the direct filing order
22 in part because, as they alluded to in their papers, they
23 have serious concerns about venue issues and where cases are
24 properly venued and how they are filed, much like *Zimmer* did
25 in our prior MDL.

1 So what that means practically is that every
2 plaintiff in America who files a case is going to have to
3 file it in appropriate jurisdiction and file it using a long
4 form complaint.

5 So our concern, which we expressed to defendants,
6 was twofold.

7 One, if you are already filing a long form
8 complaint, what's the practical point of a master complaint
9 and then a short form complaint on top of that?

10 But more important, while we agree generally and
11 think we will get to an agreement on a process to allow
12 defendants to test the sufficiency of some of their
13 affirmative defenses -- most notably preemption -- we think
14 that many of the defenses that they are going to bring are so
15 inherently factually specific that they are not -- it's not
16 possible to plead those in a master complaint.

17 For example, all fraud claims are inherently
18 factual because they have a reliance element. All factual
19 limitation claims are inherently factual because it requires
20 notice and when the plaintiff knew what they knew.

21 So what we have gotten to -- and I would agree with
22 Ms. Parker on this -- is, we have advanced the ball to the
23 point that we all agree there will be some motion practices
24 on what we are coining as "general legal issues." But we may
25 part company in terms of the need for a master complaint and

1 a master answer as it relates to all causes of action and all
2 defenses.

3 That said, we continue to work with them on that.
4 We put forth a proposal that I think we both endorsed, that
5 if we can't get that done in the next, say, 7 to 10 days,
6 that we will put briefing out on it in, similar to what we
7 did in *Zimmer*, three-page letter briefs, and then let you
8 call a ball and strike on it.

9 THE COURT: That sounds fine.

10 Let me just ask a question about your statement,
11 Mr. Becker.

12 If the case -- I have a slight inclination in favor
13 of -- against direct filing as well, but we don't need to go
14 down that road for now.

15 Let me ask a question. If people file in their
16 venues that are otherwise appropriate, why would it be that
17 it's not possible to use a short form complaint?

18 Wouldn't a short form complaint that includes venue
19 allegations satisfy the judge that will know, looking at that
20 complaint, this case is going to be MDL anyway? It's going
21 to be part of a tagalong?

22 I guess I think the advantage -- it is a small
23 one -- of filing in the appropriate venue is that years from
24 now if we remand cases for trial to other venues, we don't
25 want them to come as a complete shock to the judges who then

1 receive those cases, nor do we want to open up a situation
2 where at that point there is a dispute about venue.

3 MR. BECKER: Sure.

4 Your Honor, the defendants in our initial
5 conversation reminded me of the case law we created in *Zimmer*
6 on the DFO, so we were not going to relitigate that battle.
7 I mean, Mead Johnson's position is their position. At least
8 in terms of what your prior rulings are, we don't intend to
9 fight that.

10 In terms of a short form complaint, if it's more
11 convenient for the Court to do that, of course we will do
12 that. But the bottom line is, the allegations within the
13 complaint itself are specific -- as well as the cause of
14 action -- to the individual plaintiffs. So it's sort of a
15 belt-and-suspenders approach.

16 One other thing I would note is that, in our
17 discussions -- and I think we put this in our joint
18 submission proposal to you, is that we are not contemplating
19 that the defendants waive any of their Rule 12 motions.

20 What you are going to hear from if we go into this
21 a little bit deeper is that we have had extensive
22 conversations about a bellwether process, what that would
23 look like, and how expedited it would be.

24 Our offer to the defendants was, once you -- once
25 we identify the particular bellwether pool, the defendant

1 reserves its right to move for any type of Rule 12 pleading
2 it thinks is sufficient as it relates to an individual
3 plaintiff.

4 And we think that that's sufficient for a couple of
5 reasons. One, you can't possibly plead everything in a
6 master complaint as it relates to every person. But, two,
7 and more important, once you have these test cases, as you
8 know, your rulings in those test cases as it relates to the
9 sufficiency of fraud allegations or statute of limitations
10 will give guidance to the rest of the litigation that then
11 plaintiffs' counsel can react to.

12 So all of this is kind of a large machine moving in
13 tandem together. It's not kind of pick a box and go down
14 that vein.

15 So we are not intending to deny the defendants
16 their opportunity to challenge the sufficiency of pleadings.
17 We are just proposing they do that as it relates to
18 individual bellwether claims.

19 THE COURT: Got it.

20 I'm not going to hold you to this, but what
21 generally were you talking about with respect to a schedule
22 for bellwether trials?

23 MS. PARKER: Your Honor, if I may jump back in
24 again? It's Stephanie Parker.

25 We had discussed just very generally, if we were

1 able to go ahead and move forward so we get the forms filled
2 out and get the medical authorizations -- if we can get that
3 going really quickly, and then we can start the process of --
4 both sides determining which cases that we would propose for
5 a first tranche of bellwethers and go ahead and get discovery
6 started.

7 We are very tentatively talking about trial dates
8 that would be in perhaps the first quarter of 2023.

9 THE COURT: Okay. Got it.

10 MS. FLEISHMAN: If I may, your Honor?

11 We also anticipate that while we are doing the
12 bellwether process, we are also going to do general liability
13 discovery in a parallel course so that we are in fact ready
14 to proceed to trial as quickly as possible because our
15 clients really need these cases to move quickly. Many of our
16 clients are struggling and have very injured children. So
17 they really desperately do need us to move this in as
18 streamlined and expeditious fashion as possible.

19 THE COURT: All right. One observation I am going
20 to make. I am not holding anybody to anything. But with
21 respect to selection of bellwethers, experience suggests to
22 me that it's better to use some form of randomization for
23 that process because otherwise we have a situation where
24 plaintiffs choose the cases that are absolutely rock-hard
25 winners for them and vice versa. That's not terribly

1 instructive when you are looking to see generally how are
2 these cases going to shake out.

3 In other words, to serve the bellwether function,
4 we would want a case that looks more like a bellwether than
5 an outlier. We don't need to explore that issue in any
6 detail right now.

7 Let me just ask one more question, recognizing Zoom
8 time -- online time for these hearings is challenging under
9 the best of circumstances, and everybody has other things to
10 do.

11 I do think it is going to be useful for us to have
12 an in-person meeting. I would like your views on that.
13 Anybody who wants to weigh in on that is welcome to let me
14 know how you feel about it.

15 I will say this: The pandemic has taken its toll
16 on all of us. And I know travel is a challenge. I would, of
17 course, not expect everyone to be here for any in-person
18 hearing. I would expect people who are taking leadership
19 roles to be here and pretty much that's it.

20 And I would also encourage, if not mandate, that
21 you have to be vaccinated. We have a vaccine mandate in our
22 court. We test everybody. We have got PCR testing in our
23 building. Just so you know, I take it very seriously because
24 I recognize that travel under these circumstances can be
25 challenging. Nobody wants the litigation to make anybody

1 else sick.

2 Let me just ask one more question while I have got
3 this -- oh, with respect to an in-person conference,
4 recognizing that we may have some other written or online
5 conferences in between these, how often do you expect those
6 status conferences should take place to make sure that we are
7 moving forward aggressively?

8 MS. PARKER: We also discussed this. Actually,
9 your Honor, we tried very hard to address all the items that
10 we thought might arise today so that we could come to the
11 Court with that background.

12 We have actually discussed and we would like to
13 recommend to the Court jointly that we would be available, of
14 course, whenever the Court would like, but we are suggesting
15 every six weeks, and perhaps with the next status conference
16 somewhere around June 30th. That would allow us the
17 opportunity to finish the various drafts that we are already
18 exchanging and get those to your Honor so your Honor will
19 have a chance to review those beforehand. I think I'm
20 speaking for everybody on those prior discussions.

21 MS. KAVENY: Yes, that's right.

22 And we also had discussed whether the preference
23 would be to have them in person or to have them by video. It
24 was our thought that in person would be the preferred method
25 for the most substantive meetings every six weeks.

1 A lot could be done by all of us getting together
2 even if it's in the hallway sometimes. But just to kind of
3 be there and be together in person, that sometimes serves a
4 lot of purposes.

5 THE COURT: I have exactly the same experience.

6 MR. ROMANUCCI: Your Honor --

7 THE COURT: Yes. Go ahead.

8 MR. ROMANUCCI: Your Honor, I do have a comment and
9 understanding with respect to what you said earlier.

10 It is -- it was the DRC's position that we would
11 agree to the first hearing being on June 23rd. But we
12 thought that having status hearings every four weeks, at
13 least initially, would be more beneficial. There's a lot of
14 work to be done initially. Six weeks is quite a considerable
15 long time.

16 Within four weeks -- for example, if we don't get
17 the ESI protocol done in time by June 23rd and we need a
18 hearing, we don't want to wait six more weeks, until
19 mid-August, to have that done.

20 So I do think that, at least in the beginning, it
21 would be extremely beneficial for us to be meeting every four
22 weeks until this Court deems otherwise where the Court is
23 satisfied that we have the work done and we have everything
24 in place in order to move the litigation efficiently.

25 THE COURT: Okay. First, I understood the proposal

1 was June 30th rather than June 23rd. Did I get that wrong?

2 MR. ROMANUCCI: No. I thought it was June 23rd.

3 MS. PARKER: If I said that, I misspoke. I meant
4 to say June 30th.

5 THE COURT: June 23rd likely would not work for me.
6 I'm 99 percent sure I will be on trial that date. June 30th
7 will work for me. So I will set it for June 30th,
8 recognizing, Mr. Romanucci, that going forward we may very
9 well want to make these status conferences more frequent. I
10 agree with everything that you said.

11 I also just want to make a point. Ms. Kaveny may
12 have made this. It really does make a difference to see
13 people in person even in the hallways. And sometimes just
14 getting a cup of coffee, you solve some dispute or another.
15 I don't mean a global settlement. I mean dates for a
16 deposition, for example.

17 I worry -- I will tell you, since we talked about
18 the issue of diversity and getting newer lawyers involved, I
19 really worry about how we are going to be socializing our
20 newer lawyers in this cyber age. I know lawyers are going to
21 be more creative about the whole problem than I am. I myself
22 learned a lot about practicing law by sitting in the back of
23 a courtroom and watching other people. And I worry that that
24 just doesn't happen in the same way that it once did. But I
25 don't want to be negative here.

1 June 30th we will set for an in-person conference.

2 Another reason for making June 30th the first date
3 is, you will still need to wait for me. I'm going to you I
4 should be able to get a written ruling in a week on the
5 precise slate here.

6 One thing that I know that Mr. Ronca, who I believe
7 is no longer with us, mentioned that there is a tremendous
8 amount of work. He is certainly right.

9 And it's also correct that the MDLs take time, and
10 this one sounds like we are going to be moving pretty
11 quickly. But even so, lawyers come and go from time to time.
12 You don't always have -- you can't always count on the same
13 people to do all the same work.

14 That having been said, I have had good experience
15 in the past with lawyers dividing the amount of work that has
16 to be done such that we don't over-lawyer a case or have too
17 many people or have a swollen state, all of whom need to
18 stand in line for fees in the end. I have had, as I say,
19 very good experiences. I haven't had those problems. I know
20 other judges have.

21 So I am going to ask that -- and I may put this in
22 my order regarding the appointment of the appropriate
23 slate -- that we talk about a way of ensuring that we don't
24 get overlapping and duplicative effort and that the roles
25 that counsel play are relatively well-defined.

1 For example, it may be that we need to identify
2 some lawyers who are going to be doing a lot of the
3 discovery, the experts, the electronic discovery, and then
4 others who may be focusing on, say, trial preparation or
5 talking about settlement of individual cases or large groups
6 of cases, things like that.

7 We could leave a more specific discussion of that
8 whole issue for another day, I think.

9 Are there other issues that I think we really do
10 need to iron out right now?

11 Oh, I do want a proposal. When you do put these
12 proposed dates together, I do want a proposal that includes a
13 relatively prompt briefing schedule on motions for remand, if
14 not individual, then group motions, however you think those
15 should be resolved.

16 Are there other issues that we really do need to
17 address right now?

18 MS. PARKER: If I may?

19 A different issue that I think would be helpful to
20 the Court as the Court begins to look at all these other
21 orders and briefs that will come in, and that's the idea of
22 each side submitting a position statement.

23 I understand that your Honor had such a provision
24 in the *Zimmer* MDL. And we have been discussing it at length
25 with the plaintiffs' group. I think we can agree on the

1 parameters. But what we have been discussing is just
2 simultaneous filing -- something like 20 pages --

3 THE COURT: Perfect. That's fine.

4 MS. PARKER: -- that would identify claims, key
5 issues. And that way your Honor can -- as your Honor is
6 reviewing all this other pleadings and such, you will have
7 kind of the overall lay of the land, so to speak, from each
8 side.

9 THE COURT: That would be great. That would be
10 great.

11 MS. PARKER: Two weeks I think we could get -- Tim,
12 if that works for you all.

13 MR. BECKER: Judge, what I was going to propose is,
14 if the next status hearing is going to be set for the 30th --
15 as we have alluded to, we are very, very close to completion
16 of the preliminary orders, and I think that we are 95 percent
17 plus in agreement, but there may be an issue or two that we
18 need you to weigh in on.

19 Does it make sense that we submit those issues to
20 you along with the position papers by June 17th? That will
21 give you, roughly, two weeks to digest them and evaluate them
22 in anticipation of the status conference?

23 THE COURT: June 17th would be great.

24 Make sure that -- again, I'm expecting I'm going to
25 be adding somebody from the DRC group, and I'm expecting

1 right now that's likely to be Ms. Zimmermann. So you will
2 definitely need to confer with that person or those people.

3 MR. BECKER: I should have mentioned -- and I
4 apologize for not doing it, Judge -- that moving forward,
5 based on your comments, we will clearly, after this
6 conference, reach out to Fu as well as her entire team and
7 get them up to speed of where we are at and seek their input.

8 THE COURT: Great.

9 All right. There was somebody else who wanted to
10 be heard, correct?

11 MR. GASTEL: Your Honor, this is Ben Gastel from
12 Branstetter in Nashville.

13 I just want to very briefly bring up the snap
14 removed cases.

15 THE COURT: Yes.

16 MR. GASTEL: Again, those motions are fully
17 briefed. I'm not entirely sure if your Honor prefers to have
18 oral argument on them. But if you would -- if your
19 preference is for oral argument, I would respectfully request
20 that that also be added to the agenda on the June 30th
21 conference meeting because, with all due respect, it would
22 tremendously help us if we could get a prompt answer to
23 whether or not snap removal is available going forward in the
24 MDL.

25 THE COURT: I will certainly consider oral

1 argument. If we are going to do oral argument, we can make
2 it on the 30th, because -- you are right -- the motions are
3 fully briefed.

4 It may be that there are going to be other snap
5 removal motions.

6 The other issue I have got that I'm only just kind
7 of dipping my feet into is, the law on snap removals varies
8 from circuit to circuit. It will be -- it may be that a case
9 that is snap removed in one state or jurisdiction will stick
10 with me and that others under the identical circumstances
11 will not. So that's just something I have to be sensitive
12 to.

13 MR. GASTEL: I'm fully abreast of what you are
14 saying, your Honor, and I fully agree with you.

15 I do think that the fully briefed ones coming out
16 of Cook County are very laser focused on the specific issue
17 as to whether or not Abbott, as the forum defendant in
18 Illinois, has the right to snap remove under Seventh Circuit
19 precedent. I'm sure your Honor is aware that the Northern
20 District of Illinois jurisprudence on this falls on both
21 sides of the line.

22 And I do think that even if snap removal may arise
23 in other contexts with potentially doctors or hospitals or
24 treating physicians, certainly this issue is certainly ripe,
25 and I would respectfully request a prompt ruling on it.

1 THE COURT: I will do my best on that.

2 And for those of you who -- for all of you -- you
3 are correct, Mr. Gastel, that my colleagues have come down on
4 both sides of the issue.

5 I myself have not weighed in on a snap removal
6 issue in another case. So this will be the first time I have
7 written about it, but I certainly recognize that it's
8 critical in this case, at least with respect to that handful
9 of cases you are mentioning.

10 MR. GASTEL: Thank you, your Honor.

11 MR. ROMANUCCI: Your Honor, maybe just one more
12 issue with respect to -- maybe defendants can answer whether
13 or not they are going to be accepting service or whether it
14 will be waivers going forward for future filings?

15 MS. PARKER: I think we have already done that
16 previously.

17 THE COURT: You do not object to accepting service;
18 is that right?

19 MS. PARKER: That's correct, your Honor.

20 THE COURT: All right. Good.

21 MR. ROMANUCCI: Thank you for confirming.

22 MR. ANDRICHIK: Your Honor, this is Bill Andrichik
23 on behalf of Mead Johnson.

24 On that point -- and we previewed this for you in
25 our papers that we submitted before last week's conference --

1 we would actually request a briefing schedule on the issue of
2 the direct filings that have taken place after your Honor's
3 initial case management order.

4 There were at least four lawsuits filed by these
5 second proposed leadership teams in the Northern District of
6 Illinois apparently based on the theory that Mead Johnson's
7 principal place of business was in Chicago, despite there
8 being several courts already finding that the principal place
9 of business is in Evansville, Indiana.

10 So your Honor's initial case management order, of
11 course, said that tagalong cases are supposed to be filed in
12 an appropriate venue and that direct filing in the Northern
13 District of Illinois is appropriate only if appropriately
14 venued here.

15 The issue with the direct filing in the Northern
16 District of Illinois and then a motion to reassign, which was
17 granted before Mead Johnson could object, is that it bypasses
18 kind of the JPML process, which it just doesn't give us that
19 opportunity to address that issue.

20 So I did want to raise this today and not let it
21 linger until June 30th. I'm not asking for a decision on
22 this today or a full-blown argument, but the opportunity to
23 brief it for your Honor, especially because I expect there to
24 be more lawsuits filed directly in the Northern District of
25 Illinois with this motion to reassign. We would like to

1 address that sooner rather than later.

2 THE COURT: Why don't I ask that -- we have got
3 this June 17th target date for submission of issues as to
4 which the parties have agreed and not agreed. Why don't I
5 ask that you submit a brief maybe simultaneous on the issue
6 of snap removal at that -- I'm sorry -- on the issue of
7 direct filing versus tagalong at that time as well.

8 As I mentioned -- and I'm not wedded to this
9 position, but I have a slight preference in favor of filing
10 in the appropriate venue, as I indicated in the order that I
11 entered. I could change my mind on that. My sense is, for
12 recordkeeping purposes, it's slightly easier.

13 But I know that, based on Mr. Becker's comments,
14 you have got issues with respect to the short form complaint
15 and the like. So there may be some very good arguments for
16 not doing it in the way that I had expected. We will take
17 that up.

18 And you are right. It's something that we have to
19 decide really quickly, especially if we are talking about
20 thousands of cases. We are south of a hundred right now. So
21 if we are talking about even hundreds of more cases coming
22 in, we really do need for people to know where they should be
23 filing those cases.

24 MS. ZIMMERMANN: Thank you, your Honor.

25 I believe the DRC in one of our responsive

1 pleadings said we would be prepared to brief the issue, would
2 only take task with the basis for our filing -- only that
3 they are headquartered, but we are prepared to fully brief
4 the issue moving forward, and we will be prepared at that
5 date.

6 Thank you, your Honor.

7 MS. PARKER: Your Honor, if I may raise one other
8 item?

9 THE COURT: Sure, Ms. Parker.

10 MS. PARKER: Thank you.

11 Just to let your Honor know that we have already
12 provided to the plaintiffs a draft. We are having
13 discussions about a joint coordination order that would
14 address the state court cases as well.

15 My understanding is that the federal plaintiffs and
16 the state plaintiffs have been having discussions themselves
17 about the coordination topics.

18 THE COURT: Okay. Good. Good.

19 MR. BECKER: Your Honor, I can weigh in on that.

20 So clearly I think everybody recognizes the need
21 for cooperation, if not coordination. The devil is always in
22 the details. We have expressed to defense counsel that we
23 agree that cooperation is wholly appropriate.

24 We have also started the process of reaching out to
25 the stakeholders in the state court. They have a copy of the

1 coordination order. We have tapped the brakes on moving
2 forward with that until the Court appointed a formal
3 leadership structure. But hearing what you said today, I
4 think we will be able to move forward with that in a more
5 fulsome manner. But we have had a number of discussions with
6 the state court lawyers and are actively trying to work
7 something out.

8 THE COURT: Great. All right.

9 I don't need to cut anybody else off.

10 Anyone else need to weigh in at this point?

11 (No response.)

12 THE COURT: I want to thank you for your time and
13 again apologize for what happened last week and just commit
14 to you that we are going to be -- that we are not going to
15 have these problems in the future.

16 The next time I see you all is likely to be on that
17 June 30th date. When I say "you all," I mean those of you
18 who will be participating in the hearing, recognizing that
19 not everybody has to be here.

20 Sometimes I get asked about whether we can do
21 things in a hybrid fashion. I guess I would probably
22 slightly prefer not to, at least initially. So I will see
23 you in person.

24 The courthouse, as you know, is right downtown,
25 those of you who are in from out of town. We will set aside

1 a large courtroom for these purposes so people can be spaced
2 out appropriately.

3 MS. KAVENY: Thank you, your Honor.

4 THE COURT: I want to thank you again.

5 I think we are ready to be adjourned.

6 MS. ZIMMERMANN: Thank you, your Honor.

7 MS. FLEISHMAN: Thank you.

8 MS. KROEGER: Thank you, your Honor.

9 MR. SILL: Have a good afternoon. Thank you, your
10 Honor.

11 (An adjournment was taken at 11:35 a.m.)

12 * * * * *

13 I certify that the foregoing is a correct transcript from the
14 record of proceedings in the above-entitled matter.

15 /s/ Frances Ward June 24, 2022.
16 Official Court Reporter
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